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SUBJECT: Presidential Candidate Banda takes Zambia's Largest Newspaper to Court as Feud Heats Up

Ref: A) Lusaka 860 B) Lusaka 879

11. SUMMARY: The angry feud between Zambia's most-read newspaper, The Post, and Acting President (and ruling party presidential contender) Rupiah Banda has moved this week into the Lusaka High Court. At the end of September, Banda filed an injunction with the court to prevent The Post from printing ostensibly libelous material about him. The Post responded to the injunction with increased editorial vitriol, and yesterday the court affirmed Banda's right to seek contempt of court proceedings against The Post and its editor-in-chief, Fred M'membe. END SUMMARY.

12. Since the death of President Mwanawasa in late August, The Post - Zambia's largest circulation and only independent daily -- has been less than subtle in declaring its disdain for Acting President Rupiah Banda. The Post explicitly supported the candidacy of Finance Minister Ng'andu Magande (see reftels) to be the ruling Movement for Multiparty Democracy (MMD) party's standard-bearer in the presidential election. When the MMD selected Banda over Magande, The Post shifted to a campaign of increasingly negative, sometimes ad hominem attacks against Banda. The paper has accused Banda of, inter alia, using his position to buy votes, dishonesty about his party affiliation and even immorality for marrying a significantly younger woman.

13. The attacks led to a formal complaint by the MMD to the Media Council of Zambia (MECOZ). In a letter by MMD campaign committee media chairperson Chibezu Mfuni, the MMD contended that since August 20, 2008 (the day after Mwanawasa's death), The Post has written more than 20 editorial comments that had "unfairly scandalized" Banda. It also claimed that the editorials were full of "hate speech," calling into question Mr. Banda's personality and character. On September 27, the Lusaka High Court granted an injunction to Banda restraining The Post from publishing libelous words against him. The court also gave a penal notice to Post Editor-in-Chief Fred M'membe to comply with the order.

14. The Post responded with a rare full-page editorial entitled "Rupiah, a shameless liar," that laid bare The Post's charges against Banda as well as the paper's great disdain for the candidate. M'membe was quoted in the government-owned Sunday Mail characterizing the injunction as "meaningless." M'membe suggested that the 71-year-old Banda was an old man resorting to desperate measures that he did not even understand. On September 30, The Post printed the injunction in its entirety, under the mocking headline "Rupiah's hopeless injunction," which further infuriated Banda and his lawyers, and resulted in the contempt charges against M'membe and The Post. The contempt charges will be heard on October 3.

15. Meanwhile, Minister of Information and Banda's campaign manager Mike Mulongoti was quoted on September 29 saying "When we win the elections, (I will advise Banda to) just leave the country for a while and you will find (upon returning) that we have sorted out all these problems." The Post presented these comments as a direct threat against the paper. On September 30, Molongoti's comments were criticized by both Transparency International Zambia and the Southern African Centre for the Constructive Resolution of disputes.

16. Comment: M'membe, a lawyer and a member of the High Court bar, usually knows exactly how far The Post can go within the law. However, as reported previously, the paper's current campaign against Banda has strained all reasonable definitions of objectivity. Most of Banda's complaints come from The Post's questioning of his honesty and his character. Few of these meet the definition of libel. However, The Post has had the dubious judgment

to question Banda's marriage ("we have questioned the morality behind a man in his 70s marrying a young lady who is over 40 years younger than himself, a woman who could be his granddaughter..."). Arguments such as these cement the impression that The Post is out to get Banda at any cost. Rumors suggest that the core of The Post's fear of a Banda presidency is that it would threaten business interests in Zambian Airways, interests that Finance Minister Magande has allegedly protected. Regardless of its motivations, however, The Post has surrendered any claim of objectivity about the nation's presidential election due in four weeks. And M'membe, who has been jailed before, may yet wind up writing an editorial or two from behind bars. End comment.

KOPLOVSKY